Supreme Court, U. S.
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78-1008

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-_____

MINDA SATTERWHITE, ET AL.,
Petitioners

v.

CITY OF GREENVILLE, TEXAS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LARRY R. DAVES
P. O. Box 1115
Tyler, Texas 75710
Attorney for Petitioners

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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MINDA SATTERWHITE, ET AL.,
Petitioners

v.

CITY OF GREENVILLE, TEXAS,
Respondent

PETITIONERS' APPLICATION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT
OF THE UNITED STATES:

The Petitioner, Minda Satterwhite individually and in her representative capacity as the representative of the class of past, present, and prospective female employees of the City of Greenville, Texas respectfully submits this Application for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The order of the United States District Court for the Northern District of Texas dismissing the class action is

reproduced in Appendix A to the Petition for Writ of Certiorari. The Opinion of the district court is reported at 395 F.Supp. 698 (N.D. Tex. 1975). The Opinion of a panel of the Court of Appeals affirming the dismissal of petitioner's individual claim and reversing the dismissal of the class action is reported at 549 F.2d 347 (5th Cir. 1977). On rehearing, the majority remanded the class certification issue for findings of fact. (557 F.2d 414 (1977)). On rehearing en banc a majority of the Fifth Circuit held that, even if the denial of certification was erroneous, that error could not be corrected on appeal in this case because of the intervening decision as to the individual claim (578 F.2d 987 (1978)).

JURISDICTION

Judgment was entered by the Court of Appeals for the Fifth Circuit on August 23, 1978. On November 10, 1978, an order extending the time for filing a petition for writ of certiorari was extended to and including December 21, 1978. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1) because the remand opinion of the Court of Appeals for the Fifth Circuit conflicts with decisions of other circuits and conflicts with prior decisions of this Court.

STATUTES AND FEDERAL RULES OF CIVIL PROCEDURE

This case involves application of Rule 23 of the Federal Rules of Civil Procedure to litigation under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. Section 2000e *et seq.*

QUESTIONS PRESENTED FOR REVIEW

1. Did the failure, or refusal of the trial court to conduct an evidentiary hearing on the maintainability of this action as a class action, upon request, entitle petitioners to a remand for further proceedings rather than dismissal of the complaint?

2. Does the remedy of dismissal under the circumstances conflict with this Court's decision in *Cooper and Lybrand v. Livesay,* ____U.S.____ (1978) and *Gardner v. Westinghouse,* ____U.S.____ (1978)?

3. Does the opinion conflict with the opinions of other circuit courts?

STATEMENT OF THE CASE

Petitioner filed this case as a class action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq,* alleging that the City of Greenville, Texas discriminated in the hiring, pay, and promotion of female employees on the basis of sex. Petitioner moved for an order certifying the action as a class action and in the prayer of the supporting brief requested a hearing. (Appendix B, pp. 7-8). The trial court, without conducting a hearing, denied certification. Subsequently, the district court tried petitioner's individual claim, and rejected it on the merits. *Satterwhite v. City of Greenville, Tx.,* 395 F.Supp. 698 (N.D. Tex. 1975).

A panel of the Fifth Circuit initially affirmed on the merits with respect to the individual claim, but reversed the denial of certification. (549 F.2d 347). On rehearing, the same panel, by a divided vote, vacated and remanded the class action issue for an evidentiary hearing. On

rehearing en banc, a divided en banc court held that petitioner is not a proper class representative because "she neither has claims typical of the members of the class nor has an adequate common interest or nexus with the class." The Court did not reach the issue of whether petitioner has standing to sue under Article III, Section 2 of the Constitution.

The facts are thoroughly set out in the reported opinions, except for the issue of whether petitioner requested a hearing on the motion to certify the class action. In the prayer of the supporting brief, petitioner requested, "that this Court order a hearing on the maintainability of this action as a class action, and issue a determination that this action is maintainable as a class action." (Appendix B, pp. 7, 8).

SUMMARY OF ARGUMENT

The Court of Appeals erred in dismissing the class action based upon an inadequate record of the existence of an ongoing controversy between the class and the City of Greenville, Texas, where the inadequate record was the result of the failure or refusal of the trial court, upon request, to conduct an evidentiary hearing.

The failure or refusal to conduct a hearing deprived petitioner of an opportunity to establish the existence of the class action or to develop a reviewable record for appeal. The dismissal of the class action by the Court of Appeals therefore conflicts with this Court's holding in *Cooper and Lybrand v. Livesay*, that the denial of certification is reviewable on appeal at the behest of the named representative.

The dismissal under the narrow facts of this cause is error because of the incorrect assumption that petitioner failed to request a hearing or, in the alternative, the dismissal is error, because the Court of Appeals incorrectly concluded that there is no ongoing controversy between the putative class and the City of Greenville, Texas.

The remedy of dismissal used by the Court of Appeals brings it in conflict with at least two other circuits.

THE COURT OF APPEALS ERRED IN DISMISSING THE CLASS ACTION

The Court of Appeals dismissed petitioner's appeal of the dismissal of the complaint, remanded the cause to the district court with instructions to vacate its order, and directed the district court to dismiss the complaint.

Although the opinion is confusing, it appears that the Court of Appeals dismissed the complaint on Rule 23 grounds. The Court held: "Whatever decision the district court should have reached in February, 1975, on the basis of appearances, Mrs. Satterwhite was not then and is not now an appropriate representative. As no other champion has come forward and as the uncertified class lacks the stake in the controversy that a previously certified class might possess under *Franks* and *Sosna* the class action must be dismissed." (578 F.2d 996).

The Court of Appeals erroneously concluded that the failure to hold an evidentiary hearing is harmless. The failure to conduct an evidentiary hearing is critical. Without an evidentiary hearing, petitioner was denied the opportunity to establish the existence of the class. The Court of Appeals apparently concluded from the absence of proof of a class that there is no class. The Court notes

"The grievances, if any, of these putative and unknown class members, are, as far as this record is concerned, wholly conjectural. Hence, we are constrained to decide what the panel was 'tempted' to conclude, 557 F.2d at 422: there is no controversy between the defendant and possible class members that may now properly be considered in this suit."

The failure to conduct an evidentiary hearing upon timely request is in conflict with the holding of this Court in *Livesay* and *Gardner*. If the issue of maintainability is fully reviewable, there must be a meaningful opportunity to develop a record.

The Court of Appeals noted that the failure to provide a hearing may go uncorrected but held that: "plaintiff had the opportunity to avoid that error by timely seeking a hearing." In fact, petitioner did request a hearing. In the prayer of the brief filed in support of the motion to certify the action, petitioner stated: "Plaintiff prays that this Court order a hearing on the issue of the maintainability of this action as a class action, and issue a determination that this action is maintainable as a class action." (Appendix G. pp. 7, 8); but the trial court failed or refused to conduct a hearing.

There is some authority that the trial court is required to conduct an evidentiary hearing even without a motion from counsel. *U.S. v. U.S. Steel Corp.*, (5th Cir. 1975) 520 F.2d 1043, 1053, *cert. den.*, 429 U.S. 817. In *Livesay and Gardner,* this Court held that a district court's determination that an action may not be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, is not a final decision within the meaning of 28 U.S.C. Section 1291; nor is

that determination immediately appealable under 28 U.S.C. Section 1292 (a)(1).

This Court noted in *Livesay* that "an order denying certification is subject to effective review after final judgment at the behest of the named plaintiff or intervening class members." This Court in support of the position adopted that the determination is not immediately reviewable noting that "if the record provides an inadequate basis for this determination, a remand for further factual development may be required."

In the instant cause the Court of Appeals faced with an inadequate record imposed the responsibility for that inadequacy upon petitioner, despite petitioner's active pursuit of the class claims and despite the trial court's failure upon request to either compel adequate discovery or to conduct an evidentiary hearing on the maintainability of the action as a class action.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF OTHER CIRCUIT COURTS

At least three other circuits have been faced with the issue raised in this cause, and the remedies reached are in conflict.

In *Harold A. Goodman v. Schesinger,* F.2d, (1978) the Fourth Circuit Court of Appeals held that the district court acted prematurely in denying class certification and vacated the dismissal of the class action. The Court remanded the class action to the district court with instructions that the action be retained on the docket for a reasonable time. That Court specifically

noted in its analysis with regard to the remedy that its holding is contrary to the *Satterwhite* majority.

The Ninth Circuit in *Vun Cannon v. Breed*, 565 F.2d 1096 (1977) adopted the position that where the claims of a representative plaintiff become moot, there is no case or controversy, and therefore dismissed on standing grounds. The Sixth Circuit in *Shipp v. Memphis Area Office, Tennessee Department of Employment Security*, F.2d (1978) has apparently adopted the same position.

Although the en banc majority herein, specifically noted that it was not dismissing on Article III case or controversy grounds, it did, as pointed out above, indicate that there is no on-going controversy between the putative class and the City of Greenville, Texas.

PRAYER

In light of the importance of this conflict in the area of Title VII class action litigation, petitioners pray that the judgment of the Court of Appeals be reversed and that this action be remanded to the district court with instructions for an evidentiary hearing on the maintainability of this action as a class action and for a hearing on attorneys fees.

Respectfully submitted,

DAVES, MCCABE & CREWS
P. O. Box 1115
Tyler, Texas 75710
(214) 593-0184

By: _____
LARRY R. DAVES

CERTIFICATE OF SERVICE

I, Larry R. Daves, hereby certify that a true and correct copy of the foregoing has been on this the____ day of December, 1978, deposited in the U. S. Mail, postage prepaid, to Mr. John Andrew Martin, 3000 One Main Place, Dallas, Texas 75250, attorney for respondent.

All parties required to be served have been served.

_____
LARRY R. DAVES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MINDA SATTERWHITE, ON BEHALF OF
HERSELF AND OTHER SIMILARLY SITUATED,
Plaintiff

v.

CITY OF GREENVILLE, TEXAS
Defendant

CIVIL ACTION NO. CA 3-74-767 C

ORDER DENYING CLASS ACTION

Having heard oral argument, having examined all facts in the record, and having considered the briefs of both parties on the question of whether this cause should be maintained as a class action, the Court is of the opinion that Plaintiff's Motion for Class Action should be denied. that Defendant's Motion to Deny Class Action should be granted, and that this cause should not be maintained as a class action.

Therefore, pursuant to Federal Rule of Civil Procedure 23(c)(1), it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Class Action is denied, that Defendant's Motion to Deny Class Action is granted, and that this cause cannot be maintained as a class action.

/s/ W. M. TAYLOR, JR.
W. M. Taylor, Jr.
Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MINDA SATTERWHITE, ON BEHALF OF
HERSELF AND OTHER SIMILARLY SITUATED,
Plaintiff

v.

CITY OF GREENVILLE, TEXAS
Defendant

CIVIL ACTION NO. CA 3-74-757 C

MOTION FOR CLASS ACTION
DETERMINATION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, Minda Satterwhite, Plaintiff in the above cause pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure and respectfully requests the court to certify this action as a class action and would direct the Court's attention to Plaintiff's Brief in Support of Motion for Class Action Determination.

Respectfully submitted,

LAW OFFICES OF
LARRY R. DAVES
P. O. Box 1115
TYLER, TEXAS 75701
(214) 593-0184

By: _____
LARRY R. DAVES
ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MINDA SATTERWHITE, ON BEHALF OF
HERSELF AND OTHER SIMILARLY SITUATED,
Plaintiff

v.

CITY OF GREENVILLE, TEXAS
Defendant

CIVIL ACTION NO. CA 3-74-757 C

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION
FOR CLASS ACTION DETERMINATION

Law Offices of Larry R. Daves
P. O. Box 1115
Tyler, Texas 75701
ATORNEY FOR PLAINTIFF

I.

STATEMENT OF FACTS

The representative plaintiff has filed this action alleging that defendant City of Greenville, Texas engages in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, as amended. Municipalities and other subdivisions of the State became subject to the Civil Rights Act of 1964 effective March 24, 1972.

The representative plaintiff filed a charge of discrimination against defendant on or about October 27, 1972 with the Equal Employment Opportunities Commission alleging that defendant had refused to hire her as superintendent of the municipal airport despite her qualifications because of her sex.

Plaintiff brought this action as a class action on behalf of all prospective and present female employees of the City of Greenville alleging that defendant maintains sexually segregated job classifications and departments. This action has been brought pursuant to Rule 23 of the Federal Rules of Civil Procedure, as amended. A motion for Class Action Determination is being filed pursuant to Rule 23(c)(1) and discovery in the form of Plaintiff's First Interrogatories, has been commenced in support of plaintiff's substantive claims. This brief is filed pursuant to the Court's request at the pre-trial conference held December 17, 1974, in this cause.

II.

ARGUMENT

THIS ACTION IS MAINTAINABLE AS A CLASS ACTION PURSUANT TO RULE 23

1. THE STANDARD FOR DETERMINING WHETHER PLAINTIFF MAY MAINTAIN THIS ACTION AS A CLASS ACTION IS NOT WHETHER SHE WILL ULTIMATELY PREVAIL ON HER CLAIM

In *Huff v. N.D. Cass Company* 485 F.2d 710 (C.A. 5, 1973), the Fifth Circuit confronted the question of whether an action filed as a class action under Rule 23 alleging employing discrimination was maintainable as a class action where the trial court had made a preliminary determination that the single plaintiff representing the class was not entitled to relief on the merits of his individual claim. As to the right of the plaintiff to maintain the class action, the Court held that the standard for determining whether a plaintiff can maintain a class action is not whether he will ultimately prevail on his claim citing *Miller v. Mackey Int'l. Inc.* 452 F.2d 424 (CA5, 1971); *Johnson v. Georgia Highway Express, Inc.* 417 F.2d 1122 (CA5, 1969).

In *Huff,* the Circuit emphasized the public policy interests served in effectuating the goals of Title VII litigation in eliminating employment discrimination. The Court stated:

> The federal courts have a particularly vital role in cases such as this. To them alone Congress has assigned the power to enforce compliance with the

strictures against racial discrimination in employment under § 703(a) of Title VII.

When, as frequently is the case, the alleged discrimination has been practiced upon the plaintiff because he is a member of a class that is allegedly discriminated against, the court trying a Title VII suit bears a special responsibility in the public interest to resolve the employment dispute by determining the facts regardless of the individual plaintiff's position. . . .

Hutchings v. United States Indus. Inc. (2 EPD § 10,244) 428 F.2d 303, 310 (CA5, 1970).

The trial judge in a Title VII case bears a special responsibility in the public interest to resolve the employment dispute, for once the judicial machinery has been set in train, the proceeding takes on a public character in which remedies are devised to vindicate the policies of the Act, not merely to afford private relief to the employee. Id. at 311.

At the appellate level we have made clear that we give full scope to Title VII, recognizing, as we do, that employment discrimination is "one of the most deplorable forms of discrimination known to our society, for it deals not just with an individual's sharing in the 'outer benefits' of being an American citizen, but rather the ability to provide decently for one's family in a job or profession for which he qualifies and chooses,"[9] and recognizing also that racial discrimination which is by definition class discrimination,[10] is a particularly virulent form of employment discrimination, because it is generally both subtle and pervasive.[11] We have applied a broad approach to standing, stressing the individual's role as private attorney general taking on the mantle of the sovereign.[12]

In the case at hand the Court has indicated that he feels the Commission's finding of "no cause" to be sufficient cause to dismiss the class action. In *Huff*, the Circuit Court stated: "(i)t seems to us that a class plaintiff who otherwise meets the demands of 23(a) and (b) should not be found to be disqualified solely by an advance determination that his claim is predictably not a winning claim and that, therefore, he cannot adequately represent the class as mandated by 23(a)(4)."

2. RULE 23 IS TO BE GIVEN A LIBERAL INTERPRETAION.

Rule 23 of the Federal Rules of Civil Procedure was amended in 1966 to provide inpertinent part as follows:

(a) Prerequisities to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class had acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

The purpose of the revision was not to restrict in any way the class action mechanism but rather to allow the courts more leeway to continually shape the parameters of the class. *Arey v. Providence Hospital,* 51 F.R.D. 62 (D.C. D.C. 1972). In dealing with federal laws the effectiveness which may depend in large measure on the application of the class action device, courts have concluded that the interests of justice require that even in a doubtful case if error is to be committed it should be

in favor of allowing the class action. *Esplin v. Hirschi,* 402 F.2d 94 (C.A. 10 1968); *cert. den.* 394 U.S. 928, 89 S.Ct. 1194, 22 L.Ed.2d 459 (1969); *Kahan v. Rosenstiel,* 424 F.2d 161 (C.A. 3 1970), *cert. denied.* 398 U.S. 950, 90 S.Ct. 1870, 26 L.Ed. 290. See also *Alameda Oil Co. v. Ideal Basic Industries, Inc.,* 326 F.Supp. 98 (D.C. Colo. 1971); *Thomas v. Clarke,* 54 F.R.D. 245 (D. Minn. 1971); *Gerstle v. Continental Airlines, Inc.,* 50 F.R.D. 213 (D. Colo. 1970); *Rosenblatt v. Omega Equities Corp.,* 50 61 S.D. N.Y. 1970); *Berland v. Mack,* 48 F.R.D. 121 (S.D. N.Y. 1969). In fact, the United States Court of Appeals for the Fifth Circuit has precluded consideration of the merits in ruling on the propriety of maintaining an action as a class action, *Miller v. Mackey International, Inc.,* 452 F.2d 424 (C.A. 5, 1971), and has authorized the maintentance of a class action even where the representative plaintiff's individual claim is without merit. *Huff v. N.D. Cass Company,* 485 F.2d 710 (C.A. 5, Sept. 4, 1973).

3. THE REQUISITES OF RULE 23(a) ARE SATISFIED IN THIS ACTION.

Preliminarily, it should be pointed out that the plaintiff's efforts to obtain information to present to the Court in support of her Motion for Class Action Determination have been stymied by defendant's resistance to discovery. However, in response to Interrogatory No. 8, defendant has provided a list of all department heads of the City of Greenville. The City Manager, Director of Community Development, Director of Electric Utilities, Airport Superintendent and all Department heads are males. There are apparently no female employees in supervisory positions. Even without the requested information, plaintiff submits

that she can establish the propriety of maintaining this action as a class action. With respect to the numerosity requirement, plaintiff need not show the exact number of class members. *Gatling v. Butler,* 52 F.R.D. 335 (D. Minn. 71). Nor need the plaintiff demonstrate the impossibility of joinder. The impracticability requirement connotes no more than difficulty or inconvenience. *Hamis v. Palm Springs Alpine Estates, Inc.,* 329 F.2d 909, 913-914, (9th Cir. 1964); *Union Pacific Railroad Co. v. Woodahl,* 308 F.Supp. 1002, 1008 (D. Mont. 1970).

No numerical formula has been established for determining how many class members are needed before "the class is so numerous that joinder of all members is impracticable." Eighteen was sufficient in *Cypress v. Newport News General and Nonsectarian Hospital Association,* 375 F.2d 648 (C.A. 4, 1967). Twenty was sufficient in *Arkansas Ed. Ass'n. v. Board of Ed. of Porland Ark. School Dist.,* 446 F.2d 763 (C.A. 8, 1971). The class of past, prospective and present employees of the City of Greenville is so numerous that joinder is impracticable.

Plaintiff has alleged at least three common questions of law or fact common to the class: (1) Defendant hired a male who was less qualified than plaintiff; (2) Defendant maintains sexually segregated job classifications and departments; and (3) Defendant pays female employees less than it pays male employees for the same or similar work. The requirement of common questions of law or fact has been given a permissive application and it is not necessary for all questions in the litigation to be common. *Like v. Carter,* 448 F.2d 798 (C.A. 8, 1971).

Furthermore the requirement that the representative plaintiff's claims be typical of the claims of the class is

not a rigid requirement; there need not be an identical fact pattern. *Randle v. Swank,* 53 F.R.D. 577 (D.C. Ill. 1971). Nor must identical damages be shown. *Rodriquez v. Swank,* 318 F.Supp 289 (N.D. Ill. 1970) affirmed without opinion 403 U.S. 901, 91 S.Ct. 2202 (1971). The requirement that the representatives of the class have claims which are typical of the claims of the class has been construed to mean that the claims of the nominal plaintiff be representative of those of the members of the class whom he purports to represent and that he not have interests antagonistic to or in conflict with those he seeks to represent. *Cannon v. Texas Gulf Sulphur Co.,* 47 F.R.D. 60 (S.D. N.Y. 1969). A court suit alleging a violation of Title VII is by its nature a class action, as the evil sought to be ended is discrimination on the basis of a class characteristic. *Bowe v. Colgate-Palmolive Co.,* 416 F.2d 711 (C.A. 7, 1969). Obviously plaintiff presents factual and legal questions which are common to the class and to her individual claim, which claim is not antagonistic to nor in conflict with the claims of the class.

Generally, the requirement that the representative party will fairly and adequately protect the interests of the class have been thought to be satisfied where plaintiff's counsel is qualified, experienced and able to conduct the litigation, *Carpenter v. Hall,* 311 F.Supp. 1099 (S.D. Tex. 1970), and where the plaintiff is willing and able to prosecute the action vigorously. *Hohmann v. Packard Instrument Co., supra., Epstein v. Weiss,* 50 F.R.D. 387 (E.D. La. 1970). The number of representative plaintiffs is irrelevant *Green v. Wolf Corp.,* 406 F.2d 291 (C.A. 2, 1968), *Cert. den.* 395 U.S. 977, 89 S.Ct. 2131 (1969). The defendant has not challenged the competence of plaintiff's counsel.

It is respectfully submitted that the requisites set forth in subsection (a) of Rule 23 are satisfied in this action.

4. THE REQUIREMENTS OF RULE 23(b)(2) HAVE BEEN MET IN THIS ACTION.

Rule 23(b)(2) provides that a class action is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the lass," and the representative party is seeking "final injunctive relief or corresponding declaratory relief." Subdivision (b)(2) of Rule 23 was added in 1966 primarily to facilitate the bringing of class actions in the civil rights area. See Wright and Miller, Federal Practice and Procedure: Civil Section 1774.

The representative plaintiff has alleged that defendant "alleged that defendant has acted or refused to act on grounds generally applicable to the class" and the representative plaintiff is seeking "final injunctive relief." All that is required under this subsection is a showing that the defendant has acted in a consistent manner toward the class so that its actions show a pattern of activity. *Hicks v. Crown Zellerback Corp.*, 398 F.2d 496 (C.A. 5th, 1968). Certification under 23(b)(2) does not preclude a demand for monetary damages. *Robinson v. Lorillard Co.*, 444 F.2d 791 (C.A. 4, 1971).

Plaintiff expects the evidence to show that defendant maintains unlawful hiring, placement and job assignment practices which discriminate against female job applicants and employees as a class. It is respectfully submitted that the requisites set out in Rule 23(b)(2) have been satisfied.

WHEREFORE,

Plaintiff prays that this Court order a hearing on the issue of the maintainability of this action as a class action and issue a determination that this action is maintainable as a class action.

Respectfully submitted,

Law Offices of
LARRY R. DAVES
P. O. Box 1115
Tyler, Texas 75701

CERTIFICATE OF SERVICE

I, Larry R. Daves, hereby certify that a copy of the foregoing brief has been mailed certified return receipt requested to the Honorable John Martin, One Main Place, Dallas, Texas 75250 this 26th day of December, 1974.

LARRY R. DAVES

CA 3-74-767-C

SATTERWHITE, ET AL VS CITY OF GREENVILLE, TEXAS

DATE 1974	Page#	PROCEEDINGS -1-	Date Order Judgment N
Aug. 12	1-3	Filed COMPLAINT. Issued SUMMONS (1).	Doc.# 1
Aug 12	1-6	Filed PLAINTIFF'S FIRST INTERROGATORIES.	1-A
Aug. 14		Filed MARSHALS RETURN ON SUMMONS executed 8-15-74 by serving Jack DeBerry-City Manager of Greenville, Texas.	
Sep 6	7	Rec'd LETTER from John Andrew Martin confirming pltfs' attorney consented to extension for answer date to and including Monday, Sept. 23, 1974 (cy ref to WMTJr)	2
Sept. 23	8-10	Filed Defendant's ANSWER.	3
Sept. 27	11-15	Filed Defendant's ANSWERS AND RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES, by Olan G. Steele-representative for City of Greenville, Texas.	4
Dec. 12	16-17	Filed Plaintiff's MOTION TO COMPEL DISCOVERY.	5
Dec. 26	18-27	Filed Pltf's MOTION FOR CLASS ACTION DETERMINATION with attached Brief.	6
1975			
Jan. 17	28-30	Filed AFFIDAVIT of Cameron McKinney.	7
Jan. 17	31-42	Filed DEFENDANT'S REPLY TO PLAINTIFF'S CLASS ACTION MEMORANDUM.	8
Jan. 30	43	Filed Defendant's MOTION TO DENY CLASS ACTION.	9
Feb 4	44	Filed ORDER DENYING CLASS ACTION (...pltf's motion for class action is denied ... that deft's motion to deny class action is granted...and that this cause cannot be maintained as a class action) Cys mld to counsel	10 WMTJr
Feb. 11	45	Filed Plaintiff's NOTICE OF APPEAL from the order denying the class action entered in this action on 2-4-75.	11
Feb. 18	46	Filed letter that plaintiff no longer desires to appeal.	12
Mar 26	47-49	Filed STIPULATION OF UNCONTESTED FACTS	13
Apr. 10	50-63	Filed POST TRIAL BRIEF OF DEFENDANT.	14
Apr. 23	64	Filed DEFENDANT'S MOTION FOR JUDGMENT.	15
Apr. 25	65-69	Filed POST TRIAL BRIEF OF PLAINTIFF.	16
May 1	70-73	Filed Defendant's letter brief.	17
Jun 18	74-78	Filed OPINION (deft's atty requested to prepare and submit appropriate order) Cys mld by Judge Taylor's office to counsel of record	18 WMTJr
Jun 23	79	Filed JUDGMENT after trial by the court (right to proceed as class action is denied...that pltf take nothing against deft and all costs of suit taxed against pltf) Cys mld to counsel	19 WMTJr

Cont'd. on -2-

D.C. 110 Rev. Civil Docket Continuation

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DATE 1975	PROCEEDINGS	Date Ord Judgment
July 21	80 Filed Plaintiff's NOTICE OF APPEAL from the final judgment entered in this action of June 23, 1975. (Mailed copy of docket sheet and NOTICE to 5th Circuit this date.)	20 WMT
July 22	81-83 Filed Plaintiff's MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS, affidavit attached.	21
July 23	84-85 Filed Plaintiff's CASH BOND FOR APPEAL. ($250.00 cash)	22
Jul 28	86-87 Filed ORDER DENYING LEAVE TO APPEAL IN FORMA PAUPERIS Cys mld to counsel	23 WMTJr
Sep 2	Filed Transcript of Proceedings held March 26, 1975 with listed exhibits: Doc.# 24-A PX-1, 4 & 6 24-B DX-1 thru 6	24
Sep 2	Mailed original case papers with Transcript of Proceedings and exhibits.	